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OFFICE OF PETITIONS

In re Application of :
Richard A. BECKER et al. :
Application No. 08/285,363 : **DECISION ON PETITION**
Filed: August 3, 1994 :
Attorney Docket No. 129250-000947/US :

This is a decision on the renewed petition, filed November 10, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application, and the petition filed November 10, 2010, under 37 CFR 1.137(b) to revive the above identified application.

The petition under 37 CFR 1.8(b) is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

Petitioner requests the Notice of Abandonment mailed December 16, 1998 for failure to respond to the final Office action mailed October 3, 1997 be withdrawn as petitioner timely filed a response. As evidenced by the previously submitted post card receipt and response with a certificate of mailing date of January 29, 1998, a response was timely entrusted to the mails and received at the USPTO on January 29, 1998.

As such, and contrary to petitioners assertion, the petition is not governed by MPEP 711.03(c)(I)(B) and 37 CFR 1.10(e), since the response of January 29, 1998 is deemed timely.

Rather, as the amendment filed January 29, 1998 is a reply after a final Office action, the amendment must comply with the provisions of 37 CFR 1.116. See MPEP 714.12 and 714.13. As the examiner has determined that the amendment does not place the application in condition for allowance (see the Advisory Action Before the Filing of an Appeal Brief attached to the petition decision mailed September 10, 2010) it was not a proper reply to the final Office action.

As set forth in 35 U.S.C. 133:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

Furthermore, as set forth in 37 CFR 1.135:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.


Therefore, the application remains abandoned, even though the amendment of January 29, 1998 was timely filed as the period for filing a proper and timely response to the final Office action has expired.

Regarding the petition under 37 CFR 1.137(b), the above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed October 3, 1997, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on February 4, 1998.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, a Request for Continued Examination, and the \$810 filing fee; (2) the petition fee of \$1620; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of October 3, 1997 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Andre Boyce at (571) 272-6726, or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2772 for appropriate action on the concurrently filed Request for Continued Examination and amendment.


David A. Baccy
Petitions Examiner
Office of Petitions